REMARKS/ARGUMENTS

This Reply is being filed in response to a first Official Action on a Request for Continued Examination (RCE). The first Official Action of this RCE rejects Claims 1, 6, 10, 19 and 28 under 35 U.S.C. § 112, second paragraph as being indefinite; and rejects all of the pending claims, namely Claims 1-36, under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0092376 to Syed, in view of U.S. Patent Application Publication No. 2004/0003266 to Moshir et al. As explained below, however, Applicants respectfully submit that the claims are definite and patentably distinct from Syed and Moshir, taken individually or in any proper combination. Nonetheless, Applicants have amended various ones of the claims to further clarify the claimed invention. In view of the amendments to the claims and the remarks presented herein, Applicants respectfully request reconsideration and allowance of all of the pending claims of the present application.

A. Claim Construction and Prima Facie Anticipation/Obviousness

Initially, Applicants note that the Patent Office has the initial burden of proof in establishing *prima facie* anticipation or obviousness of a claimed invention under 35 U.S.C. § 102 or § 103. *In re Warner*, 379 F.3d 1011, 1016 (CCPA 1967). To make a fair review of the merits of a *prima facie* case of anticipation or obviousness, "[t]he Examiner must make specific findings as to claim construction." *Ex parte* Beery, Appeal No. 2008-0543, Application No. 09/954,823 (BPAI Sep. 29, 2008) (emphasis added); *Ex parte* Blankenstein et al., Appeal No. 2007-2872, Application No. 10/116,312 (BPAI Aug. 26, 2008); and *see Gechter v. Davidson*, 116 F.3d 1454 (Fed. Cir. 1997); and MPEP §§ 706, 706.07.

In the instant case, the Office continues to fail to provide Applicants with a sufficient claim construction or interpretation of the cited references so as to enable the Applicants to make a fair review of the merits of the case of anticipation or obviousness proffered by the Examiner, or to effectively reply or readily judge the advisability of an appeal. The Examiner continues to quote or paraphrase Applicants' claim language with annotated citations to figures, or column and line numbers of the cited references. The Examiner still does not provide sufficient findings or other explanation regarding Applicants' claims, the cited references, or the application of the

cited references to Applicants' claims. The Board of Patent Appeals has found that the mere citing of passages of the prior art is insufficient to meet the Examiner's "initial burden of pointing out where the applied prior art teaches or suggests Appellant's invention." *Ex parte* Beery, Appeal No. 2008-0543, page 5. As stated by the Board in *Ex parte* Beery, "The difficulty we have with the Examiner's position is its failure to specifically point out where in the cited passages there is found a teaching of each of the disputed claim limitations." *Id.* (emphasis added).

Applicants therefore respectfully submit that the Examiner has failed to establish *prima facie* anticipation or obviousness of the claimed invention. Again, should the Examiner continue to reject the claims as being unpatentable over the same or any other ground, Applicants respectfully request that the Examiner submit on the record specific findings as to the construction being applied to the claims, an explanation of the references being cited against the claims, and how those references disclose recited features of the claims.

B.   The Claims are Definite

As indicated above, the Official Action rejects Claims 1, 6, 10, 19 and 28 as being indefinite. More particularly, the Official Action alleges that the term "less than," is indefinite as to the requisite degree of the recited portion of content being "less than" all of the content. To the contrary, however, Applicants respectfully submit that the term "less than" is not in fact a term of degree. And nowhere do the respective claims explicitly, inherently or implicitly require any particular degree of a portion of content being less than all of the content. Instead, the claims simply recite that the received portion of content is less than all of the content.

For at least the foregoing reasons, Applicants respectfully submit that the rejection of Claims 1, 6, 10, 19 and 28 as being indefinite is overcome.

C.   The Claims are Patentable

As indicated above, the Official Action rejects 1-36 as being unpatentable over Syed, in view of Moshir. According to one aspect of the claimed invention, as reflected by independent Claim 1, a system is provided for downloading pushed content. As recited, the system includes a

terminal comprising a processor configured to receive service loading content that identifies download content and has a digital signature. The processor is configured to authenticate the service loading content based upon the digital signature, and when the service loading content is authenticated, pull the download content to the terminal. In this regard, the processor is configured to authenticate the service loading content, and pull the download content, in response to receiving the service loading content and independent of interaction from a user of the terminal. The processor is further configured to determine when an interruption occurs in pulling the download content such that the terminal receives a portion but less than all of the download content, and when an interruption occurs in receiving the content, recover the download content including receiving a remaining portion of the download content without also receiving at least part of the previously received portion.

In contrast to independent Claim 1, Applicants submit that neither Syed nor Moshir, taken individually or in any proper combination, teaches or suggests a terminal <u>receiving service</u> <u>loading content (including a digital signature), and in response thereto and without user</u> <u>interaction, authenticating the service loading content (based on the digital signature) and pulling</u> <u>download content identified by the service loading content</u>. That is, nowhere does either Syed or Moshir, taken individually or in any proper combination, disclose a terminal receiving service loading content that identifies download content, and also has a digital signature that is authenticated before the terminal pulls the download content. The Official Action cites Syed for these features. Applicants respectfully disagree.

Briefly, Syed discloses a push-pull gateway (iPPG or iGateway) that may receive pushed content from one or more application service providers, or may pull content from one or more data servers. The gateway then prioritizes, schedules and sends the content to one or more receivers (via an iExciter). In contrast to independent Claim 1, however, nowhere does Syed disclose any of its gateway, application service providers or data servers send or receive any "service loading content," much less service loading content that identifies download content and has a digital signature. The only portion of Syed that even discloses a digital signature is directed to an extended header of a generic encoder header for a turbo broadcast layer that is responsible for transport of content from the gateway to the receiver. *See* Syed, FIG. 5a,

paragraph [0133]. But nowhere does Syed disclose that this header includes or is otherwise part of any service loading content. And nowhere does Syed disclose that its receiver responds to the header or any datagram including the header by authenticating the content and pulling the identified content (independent of user interaction), as also recited by independent Claim 1.

Applicants therefore respectfully submit that independent Claim 1, and by dependency Claims 2-9, is patentably distinct from Syed and Moshir, taken individually or in any proper combination. Applicants also respectfully submit that independent Claims 10, 19 and 28 recite subject matter similar to that of independent Claim 1, including at least the service-loading content and download-recovery features. Thus, Applicants also respectfully submit that independent Claims 10, 19 and 28, and by dependency Claims 11-18, 20-27 and 29-36, are patentably distinct from Syed and Moshir, taken individually or in any proper combination, for reasons similar to those provided above with respect to independent Claim 1.

For at least the foregoing reasons, Applicants respectfully submit that the rejection of Claims 1-36 as being unpatentable over Syed, in view of Moshir is overcome.

CONCLUSION

In view of the amendments to the claims and the remarks presented herein, Applicants respectfully submit that the present application is in condition for allowance. As such, the issuance of a Notice of Allowance is therefore respectfully requested. In order to expedite the examination of the present application, the Examiner is encouraged to contact Applicants' undersigned attorney in order to resolve any remaining issues.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

Andrew T. Spence
Registration No. 45,699

Customer No. 00826
ALSTON & BIRD LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000
Tel Charlotte Office (704) 444-1000
Fax Charlotte Office (704) 444-1111
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